



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200701037

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

OCT 13 2006

UICs: 408.00-00
408.03-00

T:EP:RA:T3

Legend:

Taxpayer A: =

Taxpayer B =

Individual C =

Bank A =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Amount G =

Court N =

Court O =

Court P =

Court Q =

Case O =

IRA X =

Dear :

This is in response to your request dated , submitted by your authorized representative, for a ruling to waive the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

Under penalty of perjury, you have submitted the following facts and representations in support of your ruling request.

Taxpayer A, who is married to Taxpayer B, formerly maintained IRA X with Bank A. It has been represented that IRA X met the requirements of Code section 408(a) at all times relevant to this ruling request.

On or about Date 1, 2001, Taxpayers A and B filed a voluntary petition for relief under Chapter 7 of the Federal Bankruptcy Code. Listed in their Schedule B, "Personal Property," was IRA X. On the Schedule C, "Property Claimed as Exempt", Taxpayer A claimed a bankruptcy exemption with respect to his IRA X in the amount of Amount G. The Trustee in Bankruptcy, Individual C, contested said claimed exemption on or about Date 2, 2001. After an evidentiary hearing on or about Date 3, 2001, the trustee's objection was sustained by Court N. Court N's determination was sustained by Court O, and further upheld by Court P. Eventually, Taxpayer A's claim of exemption was upheld by Court Q in Case O.

Over Taxpayer A's objections, Amount G was distributed from IRA X during calendar year 2002. Taxpayer A filed an individual (non-joint) calendar year 2002 Form 1040, U.S. Individual Income Tax Return, on or about Date 4, 2003. Thus, with respect to Taxpayer A, calendar year 2002 remains an "open" tax year.

Taxpayer A asserts that his failure to accomplish a rollover of Amount G distributed from his IRA X within the 60-day period prescribed by section 408(d)(3) of the Code was due to his inability to access the IRA funds after they were involuntarily distributed from IRA X as a result of the court decisions referenced above. Taxpayer A further represents that if the Internal Revenue Service responds favorably to his request for letter ruling, an amount not to exceed Amount G will be rolled over into an individual retirement account set up and maintained in the name of Taxpayer A no later than the 60th day following the date of said letter ruling.

Based on the above facts and representations, Taxpayer A requests that the Internal Revenue Service waive the 60 day rollover requirement with respect to his intended contribution of an amount not to exceed Amount G into an IRA set up and

maintained in his name because the failure to waive such requirement would be against equity or good conscience.

With respect to Taxpayer A's ruling request, section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to, IRA rollovers. Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant

to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented demonstrates that Taxpayer A had no control over Amount G being distributed from his IRA X. Subsequent to the distribution of Amount G, Taxpayer A appealed the decision of Court N denying his claim that Amount G was not subject to the control of Individual C, the trustee in bankruptcy. Eventually, Taxpayer A was successful. This request for letter ruling was filed shortly after the decision of Court Q, referenced above.

Accordingly, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount G. Taxpayer A is granted a period not to exceed 60 days from the issuance of this ruling letter to contribute Amount G into a Rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the contribution of Amount G into an IRA described in Code section 408(a) within the time frame specified herein will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

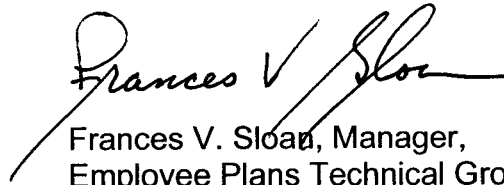
This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file in this office, a copy of this letter ruling is being sent to your authorized representative.

200701037

If you wish to inquire about this ruling, please contact _____, Esq.
(ID: -) at () - . Please address all correspondence to
SE:T:EP:RA:T3.

Sincerely yours,


Frances V. Sloan, Manager,
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose